

STATE OF NORTH CAROLINA		File No. 19-CVS-
Durham County	FILED	In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
Name And Address Of Plaintiff 1 JOHN DAVID GUNTER		GENERAL CIVIL ACTION COVER SHEET <input checked="" type="checkbox"/> INITIAL FILING <input type="checkbox"/> SUBSEQUENT FILING <small>Rule 5(b), General Rules of Practice For Superior and District Courts</small>
Name And Address Of Plaintiff 2 PATRICIA HADDEN GUNTER		
Name Of Defendant 1 CITY OF DURHAM		Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address) LeAnn Nease Brown Brown & Bunch, PLLC 101 N. Columbia Street Chapel Hill, NC 27514 Telephone No. (919) 968-1111 Cellular Telephone No. NC Attorney Bar No. 12501 Attorney E-Mail Address lnease@brownandbunch.com
VERSUS		
Name Of Defendant 2 RESEARCH TRIANGLE REGIONAL PUBLIC TRANSIT AUTHORITY, D/B/A GOTRIANGLE		Name Of Firm Brown & Bunch, PLLC FAX No. (919) 968-1444 Counsel for <input checked="" type="checkbox"/> All Plaintiffs <input type="checkbox"/> All Defendants <input type="checkbox"/> Only (list party(ies) represented)
Summons Submitted <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> Initial Appearance In Case <input type="checkbox"/> Change of Address
Summons Submitted <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Amount In controversy does not exceed \$15,000 <input type="checkbox"/> Stipulate to arbitration
<input type="checkbox"/> Jury Demanded In Pleading <input type="checkbox"/> Complex Litigation		
TYPE OF PLEADING		
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p><i>(check all that apply)</i></p> <p><input type="checkbox"/> Amend (AMND)</p> <p><input type="checkbox"/> Amended Answer/Reply (AMND-Response)</p> <p><input type="checkbox"/> Amended Complaint (AMND)</p> <p><input type="checkbox"/> Assess Costs (COST)</p> <p><input type="checkbox"/> Answer/Reply (ANSW-Response) (see Note)</p> <p><input type="checkbox"/> Change Venue (CHVN)</p> <p><input checked="" type="checkbox"/> Complaint (COMP)</p> <p><input type="checkbox"/> Confession Of Judgment (CNJF)</p> <p><input type="checkbox"/> Consent Order (CONS)</p> <p><input type="checkbox"/> Consolidate (CNSL)</p> <p><input type="checkbox"/> Contempt (CNTP)</p> <p><input type="checkbox"/> Continue (CNTN)</p> <p><input type="checkbox"/> Compel (CMPL)</p> <p><input type="checkbox"/> Counterclaim (CTCL) Assess Court Costs</p> <p><input type="checkbox"/> Crossclaim (list on back) (CRSS) Assess Court Costs</p> <p><input type="checkbox"/> Dismiss (DISM) Assess Court Costs</p> <p><input type="checkbox"/> Exempt/Waive Mediation (EXMD)</p> <p><input type="checkbox"/> Extend Statute Of Limitations, Rule 9 (ESOL)</p> <p><input type="checkbox"/> Extend Time For Complaint (EXCO)</p> <p><input type="checkbox"/> Failure To Join Necessary Party (FJNP)</p> </div> <div style="width: 48%;"> <p><i>(check all that apply)</i></p> <p><input type="checkbox"/> Failure To State A Claim (FASC)</p> <p><input type="checkbox"/> Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)</p> <p><input type="checkbox"/> Improper Venue/Division (IMVN)</p> <p><input type="checkbox"/> Including Attorney's Fees (ATTY)</p> <p><input type="checkbox"/> Intervene (INTR)</p> <p><input type="checkbox"/> Interplead (OTHR)</p> <p><input type="checkbox"/> Lack Of Jurisdiction (Person) (LJPN)</p> <p><input type="checkbox"/> Lack Of Jurisdiction (Subject Matter) (LJSM)</p> <p><input type="checkbox"/> Modification Of Child Support In IV-D Actions (MSUP)</p> <p><input type="checkbox"/> Notice Of Dismissal With Or Without Prejudice (VOLD)</p> <p><input type="checkbox"/> Petition To Sue As Indigent (OTHR)</p> <p><input type="checkbox"/> Rule 12 Motion In Lieu Of Answer (MDLA)</p> <p><input type="checkbox"/> Sanctions (SANC)</p> <p><input type="checkbox"/> Set Aside (OTHR)</p> <p><input type="checkbox"/> Show Cause (SHOW)</p> <p><input type="checkbox"/> Transfer (TRFR)</p> <p><input type="checkbox"/> Third Party Complaint (list Third Party Defendants on back) (TPCL)</p> <p><input type="checkbox"/> Vacate/Modify Judgment (VCMD)</p> <p><input type="checkbox"/> Withdraw As Counsel (WDCN)</p> <p><input type="checkbox"/> Other (specify and list each separately)</p> </div> </div>		

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

CLAIMS FOR RELIEF

- | | | |
|--|---|--|
| <input type="checkbox"/> Administrative Appeal (ADMA) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State | <input type="checkbox"/> Product Liability (PROD) |
| <input type="checkbox"/> Appointment Of Receiver (APRC) | <input type="checkbox"/> Convictions (PLDP) | <input type="checkbox"/> Real Property (RLPR) |
| <input type="checkbox"/> Attachment/Garnishment (ATTC) | <input type="checkbox"/> Medical Malpractice (MDML) | <input type="checkbox"/> Specific Performance (SPPR) |
| <input type="checkbox"/> Claim And Delivery (CLMD) | <input type="checkbox"/> Minor Settlement (MSTL) | <input checked="" type="checkbox"/> Other (specify and list each separately) |
| <input type="checkbox"/> Collection On Account (ACCT) | <input type="checkbox"/> Money Owed (MNYO) | Declaratory Judgment Action |
| <input type="checkbox"/> Condemnation (CNDM) | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) | |
| <input type="checkbox"/> Contract (CNTR) | <input type="checkbox"/> Negligence - Other (NEGO) | |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Motor Vehicle Lien G.S. 44A (MVLN) | |
| <input type="checkbox"/> Injunction (INJU) | <input type="checkbox"/> Possession Of Personal Property (POPP) | |

Date

01/31/19

Signature Of Attorney/Party

FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)
Substitution Of Trustee (Judicial Foreclosure) (RSOT)
Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input checked="" type="checkbox"/> Additional Plaintiff(s)	
3	JOAN BECK HART	
4	JON P. HOFFMAN	
5	BETTY RAY HOFFMAN	
6	VIRGINIA A. MEIHAUS	
No.	<input type="checkbox"/> Additional Defendant(s) <input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

3. Plaintiff Patricia Hadden Gunter ("P. Gunter") is a citizen and resident of Durham County, North Carolina. Plaintiff, P. Gunter and her husband, own and reside in a home at 103 Pinot Court in the Villas at Culp Arbor.

4. Plaintiff Joan Beck Hart ("Hart") is a citizen and resident of Durham County, North Carolina. Plaintiff Hart owns and resides in a home at 115 Pinot Court in the Villas at Culp Arbor.

5. Plaintiff, Jon P. Hoffman ("J. Hoffman"), is a citizen and resident of Durham County, North Carolina. Plaintiff, J. Hoffman and his wife, own and reside in a home at 211 Pinot Court in the Villas at Culp Arbor.

6. Plaintiff, Betty Ray Hoffman ("BR Hoffman"), is a citizen and resident of Durham County, North Carolina. Plaintiff, BR Hoffman and her husband, own and reside in a home at 211 Pinot Court in the Villas at Culp Arbor.

7. Plaintiff, Virginia Meihaus ("Meihaus"), is a citizen and resident of Durham County, North Carolina. Meihaus owns and resides in a home at 5006 Niagra Drive in the Villas at Culp Arbor.

8. Plaintiffs are and will be directly and adversely affected by the rezoning and by GoTriangle's construction and operation of the proposed Rail Operations Maintenance Facility ("ROMF"), including but not limited to loss of the use and enjoyment of their property, increased noise, increased pollution, increased traffic passing their homes, loss of property value, and interference with their health, safety, and general welfare. The rights of each are and will be affected and each will suffer special damages distinct from the rest of the community.

9. Defendant, City of Durham ("Durham") is a North Carolina body politic and corporate, duly chartered by the North Carolina General Assembly, whose Clerk is Dianalynn Schreiber and whose official address is 101 City Hall Plaza, Durham, NC 27701.

10. Defendant Research Triangle Regional Public Transit Authority, d/b/a GoTriangle (previously known as Triangle Transit and Triangle Transit Authority or TTA) ("GoTriangle") is a unit of local government chartered by the North Carolina Secretary of State on December 1, 1989. On information and belief, Jeff Mann is its President and CEO and/or its general manager. On information and belief, Shelley Blake is its general counsel.

JURISDICTION

11. This Court has jurisdiction over the parties and the subject matter under N.C.G.S. §1-75.4, N.C.G.S. §7A, Art. 20 generally, and N.C.G.S. §7A-245.

12. Venue is proper in this Court under N.C.G.S. §1-82.

FACTS

13. GoTriangle owns an approximately 23.422-acre tract along the east side of Farrington Road in Durham, generally at 4901 Farrington Road ("Site").

14. GoTriangle applied to Durham to annex the Site into the City of Durham. It also sought to annex additional right-of-way along Farrington Road and I-40.

15. GoTriangle also submitted a request for a zoning map change to rezone the Site from Residential Suburban - 20 ("RS-20") to Industrial Light with a Development Plan ("ILD").

16. At the time of the zoning map change request, the Site was designated as Commercial and Office on Durham's Comprehensive Plan's Future Land Use Map ("FLUM").

17. GoTriangle also sought an amendment to the FLUM to designate the Site as Industrial instead of Commercial and Office.

18. Residential Suburban Districts (RS-20, RS-10, RS-8 and RS-M) are established in the UDO "to provide for orderly suburban residential development and redevelopment. Durham North Carolina Unified Development Ordinance ("UDO") Section 4.2.2. Limited non-residential uses are allowed subject to restrictions necessary to preserve the character of the suburban neighborhood." Id. RS Districts "are used to implement the Comprehensive Plan within those areas shown as the Suburban Tier...." Id.

19. The Industrial Light District ("IL") "is established to provide for a wide range of light manufacturing, warehousing, and wholesaling activities as well as offices and some support services, all subject to minimum design standards intended to ensure such development is compatible with high visibility areas." UDO Section 4.3.6. Standards of the IL district "are designed to minimize impacts on the environment and to assure compatibility with the surrounding area." Id. It is the intent of the IL district "to offer sites for those industries whose operations, exposure, location or traffic have minimal impact on adjacent properties." Id.

20. The Site is in the Suburban Development Tier, the Cape Fear Basin, the Falls/Jordan District Watershed Protection Overlay-B ("F/J-

B") and the Major Transportation Corridor Overlays, I-40 Overlay District in the UDO and its plans and policies.

21. Durham's development tier map is "intended to insure that development reflects the character of the area within which it occurs...." UDO Section 4.1.2.

22. UDO Section 4.1.2 states "the tiers shown on the map shall function as overlays, establishing guidelines within which different development patterns, intensities and densities shall be utilized."

23. The Suburban Tier contemplates "development at traditional suburban densities and patterns." "This area is anticipated to absorb the majority of Durham's population growth and its attendant demands for housing, employment, and goods and services, including opportunities for affordable housing and recreation." UDO Section 4.1.2A 3.

24. The Falls/Jordan District Watershed Protection Overlay-B District (F/J-B) is one of six watershed overlays established in the UDO. The purpose of the watershed overlays is to reduce the risk of pollution from stormwater running off paved and other impervious surfaces and the risk of discharges of hazardous and toxic materials into the natural drainage system tributary to the drinking water supplies. UDO Section 4.11.1 A.

25. Development restrictions in the F/J-B include restrictions on lot size, impervious surface and other matters. UDO Section 4.11.4 and 8.7.

26. The purpose of the Major Transportation Corridor Overlay is "to enhance the economic and aesthetic appeal and orderly development of properties adjacent to major transportation corridors." UDO Section

4.9.1. The overlay district has buffer requirements ranging from 30 to 100 feet based on factors such as volume of traffic along the transportation route and the existing and proposed land use in the area. For the area where the Site is located, the buffer requirement is 100 feet. UDO Section 4.1.3.

27. The UDO requires existing vegetation be maintained in a natural, undisturbed state within the buffer area and where existing vegetation provides inadequate screening, vegetation be installed to meet the opacity standards of UDO Section 9.4.4 A.

28. UDO Section 9.4.4 A requires existing vegetation have an opacity standard of 0.8 or greater in the suburban tiers.

29. Because major transportation terminals and manufacturing facilities "have a greater impact on the surrounding area than industries found in the IL District," they are placed in the Industrial (I) District. UDO Section 4.3.7. It is the intent of the I District "to provide an environment for industries that is unencumbered by nearby residential development." Id.

30. The rezoning request was ILDP, not I, meaning GoTriangle sought an Industrial Light zone with a development plan, not an Industrial zone.

31. A "development plan" under the UDO is "a type of plan that becomes part of the zoning of property that establishes the level of development allowed absent further zoning action except as otherwise allowed or required under" the UDO. UDO Section 17.3.D, Definitions.

32. GoTriangle's ILDP rezoning request sought an Industrial Light zoning allowing it to build to the level of development shown on the plans it included in its request.

33. After rezoning to ILDP, the only subsequent review is a site plan review to determine compliance with UDO requirements and the previously reviewed Development Plan and to review provisions for the handling of waste, parking, access and circulation, traffic patterns, stormwater control and easements and dedication. UDO Section 3.7.1 and 3.7.5.

34. To the West, the Site is adjacent to and across Farrington Road from the Villas at Culp Arbor, a 55+ residential development. 60 residences in Culp Arbor are within a 1000-foot range of the proposed ROMF.

35. The Site is also nearby residential developments Glenview Park, Prescott Place and Trenton to the northeast; and Maida Vale, Creekside and Weston Downs, Blenheim Woods and The Oaks to the West.

36. Creekside Elementary School, a Title 1 school is to the West, less than one-quarter mile away.

37. Pinot Court and Niagra Drive are part of the Villas at Culp Arbor. These streets are closest in proximity to the Site.

38. At the time of the rezoning hearing there were 14 homes in the Villas at Culp Arbor directly across Farrington Road from the Site. Of the 16 now there, 13 are on Pinot and 3 are on Niagra. All are within 500 feet of the Site. Some are as close as 110 feet.

39. The properties surrounding the Site, including the Villas at Culp Arbor, were planned in the FLUM to be developed as low density

residential, low-medium density residential and medium density residential and have been developed in accordance with the FLUM.

40. No Industrial or Industrial Light zoning was planned or shown on the FLUM for the area that includes the Site.

41. The closest Industrial zoning is 4½ miles from the Site, west of I-40.

42. UDO Section 1.5 provides that Durham's Comprehensive Plan as adopted "indicates desired development at various levels of intensity." The UDO "is intended to implement the Comprehensive Plan, therefore the Plan should be used as a guide for the application of [the UDO] to land within the areas covered, as well as for the provision of public services."

43. UDO Section 1.2.1 states the purpose of the UDO "to promote the health, safety and general welfare of the residents of Durham City and County."

44. UDO Section 3.4.7 sets forth the criteria for FLUM change recommendations. Recommendations of the Staff and the Planning Commission regarding a proposed FLUM change must show these criteria were considered:

- a. whether the proposed change would be consistent with the intent, goals, objectives, policies, guiding principles and programs of any adopted plans;
- b. whether the proposed change would be compatible with the existing land use pattern and/or designated future land uses;
- c. whether the proposed change would create substantial adverse impacts in the adjacent area or the city or county in general; and
- d. whether the subject site is of adequate shape and size to accommodate the proposed change.

45. On October 9, 2018, the Durham Planning Commission ("Commission") considered GoTriangle's application to amend the FLUM and rezone the Site.

46. The Planning Commission did not recommend approval of the proposed Industrial Future Land Use Designation or the proposed ILDP Zoning district. Their vote was 4-4.

47. UDO Section 3.5.10 requires the Planning Commission provide written recommendations regarding proposed map changes based on reasons articulated by voting Commission Members. Commissioners must consider plan consistency and may consider other matters deemed appropriate such as compatibility with the present zoning, conforming uses of nearby property, the character of the neighborhood, suitability of the property for uses permitted by the current versus the proposed district, whether the proposed change tends to improve the balance of uses, or meets a specific demand in the City and County, and the availability of adequate facilities for the proposed use. UDO Section 3.5.10.

48. The four Planning Commissioners who expressed concerns about GoTriangle's request noted the property's shape and contours and the presence of wetlands, stream buffers, highway rights-of-way and major transportation corridor buffers. These factors made the Site ill-suited for the zoning requested and the ROMF uses proposed.

49. The Commissioners opposed noted the proposal was to clear cut 88 percent of the Site to build the ROMF.

50. The Commissioners opposed noted the train tracks loop over protected stream buffers.

51. The Commissioners opposed noted the proposal eliminates wetlands to build the ROMF.

52. The Commissioners opposed noted the proposal seeks to encroach upon the 100-foot Major Transportation Corridor Buffer and remove it entirely for 745 feet.

53. The Commissioners opposed noted the proposal creates noise and light pollution.

54. The Planning Commission noted that the ROMF operates indoors and outdoors, 24 hours a day, 365 days a year, is lighted, includes a building as tall as 50 feet and has trains coming and going constantly powered by electrical current supplied from lines suspended on masts.

55. The Planning Commission observed that trains routinely enter the building by means of a tight loop of track which requires sharp turns that cause railway wheels to squeal as their flanges meet the side of rails.

56. The Planning Commission noted that over 130 employees would work at the ROMF.

57. The Planning Commission noted that the opacity of the buffer shown in the Development Plan is 40 percent.

58. The Planning Commission noted the planned ROMF building is exposed concrete, metal and glass windows.

59. Before acting on a zoning map change request, the Durham City Council must consider recommendations of the Planning Commission, Planning Director (or designee) and staff agencies and conduct a public hearing where interested parties can be heard. UDO Section 3.5.11 A.1.

60. On December 3, 2018, a public hearing was held on GoTriangle's application to rezone.

61. Representatives of GoTriangle and 18 citizens spoke in favor of the rezoning request.

62. Citizens speaking in favor of the request cited their support for light rail generally and not the suitability of the Site for the ROMF.

63. The suitability of the Site for rezoning for a ROMF was the only issue before the City Council.

64. 52 citizens spoke against the rezoning request for the Site.

65. The citizens who spoke in opposition included citizens from the Vilas at Culp Arbor and citizens in other nearby neighborhoods.

66. Numerous parents of children enrolled at Creekside Elementary School also spoke against the rezoning.

67. On information and belief, Creekside Elementary School is a Title 1 school meaning that at least forty percent of its students are from low-income homes, qualifying the school for additional funding and advocacy to combat low academic performance associated with poverty.

68. The Creekside campus is less than 1/4 mile from the Site.

69. Citizens and parents were concerned that notices of the public hearing were sent only to the Durham Public Schools Administrative Office, meaning parents of students did not receive direct notice.

70. Many testified they had only recently learned of the plan for the ROMF.

71. Creekside parents requested the City Council delay the vote so parents and guardians could be notified and so noise pollution and other effects on the school and its students could be analyzed.

72. Creekside parents expressed concerns that the trailers used by Creekside Elementary are not adequately equipped to handle loud screeching noises from the proposed ROMF.

73. Creekside parents expressed concern about the impact of constant noise on students' ability to learn and to play at the school.

74. There was no information provided to demonstrate noise testing had been conducted regarding the impact of noise at the school.

75. Citizens testified that of the 850 to 900 students at Creekside, many have 504 or IEP plans and many (around eight percent) have special needs, making the impact of noise on their ability to learn more troublesome. On information and belief, noise in the classroom and on the playground decreases comprehension of information, reduces academic achievement, and increases social/emotional issues. For children with sensory processing disorders, the situation is compounded.

76. GoTriangle caused a noise and vibration analysis to be conducted for the ROMF. The report is dated October 2018 and is titled "Supplemental Environmental Assessment, Appendix J: Proposed Refinements Noise and Vibrations Technical Report." ("October 2018 Report").

77. GoTriangle acknowledge that noise emanating from the ROMF had been a primary concern expressed by neighbors.

78. There are several types of noise impact from a facility like the ROMF.

79. One pernicious impact is "wheel squeal," the sharp noise made as a train rounds curved track in the ROMF, and the flanges of the wheels come into contact with the side of the rails.

80. On information and belief, the ROMF operates 24 hours a day, 365 days per year.

81. On information and belief, the potential for wheel squeal while neighbors are sleeping is up to 48 times per night.

82. The October 2018 Report concludes that at least 13 residences are in the Federal Transit Administration ("FTA") "moderate impact" category for noise. They are marked on GoTriangle materials with a yellow dot.

83. Plaintiffs Gunter, Hart and Hoffman live in 3 of the 13 identified yellow-dot houses. Plaintiff Meihaus' home is not identified as such but is the closest of all homes to the Site.

84. The conclusions about noise impact in the October 2018 report purport to have compared existing noise measurements (including I-40) with modeled cumulative noise projections after project completion.

85. Data used in the October 2018 Report was derived from a changed elevation report that GoTriangle revealed shortly before the December 3, 2018 hearing.

86. The closest measurement of ambient noise to plaintiff's homes used in the October 2018 Report is over 2,500 feet away. The next closest measurement is about 7,000 feet away.

87. The houses directly across Farrington Road from the Site are all within 500 feet of the Site and some are as close as 110 feet.

88. Creekside Elementary is less than a 1/4 mile from the Site.

89. On information and belief, no existing noise measurement was reported in the data used in the October 2018 Report for Creekside Elementary.

90. Contributors to the cumulative noise effect of development of the Site for the ROMF are train car movements, electrical substations, the car wash operation, wheel squeal and increased noise from I-40 due to removal of a substantial portion of the existing tree buffer.

91. Information was presented to the City Council from the World Health Organization Guidelines for Community Noise (1999) (WHO Guidelines) note that uninterrupted sleep is a prerequisite for good physiological and mental functioning and that sleep disturbance creates side effects such as difficulty in falling asleep, awakenings and alterations of sleep stages or depth, increased blood pressure, heart rate and finger pulse amplitude, vasoconstriction, changes in respiration, cardiac arrhythmia and increased body movements.

92. The WHO Guidelines acknowledge the difference between sound levels of a noise event (such as wheel squeal) and background sound levels (such as the constant hum of traffic on I-40) and the startle/awakening reaction noise events cause. The more noise events per night, the greater the chance for sleep disturbance.

93. The WHO Guidelines identifying groups vulnerable to the impacts of noise to include the elderly, people with diseases such as high blood pressure, people dealing with complex cognitive tasks, people with hearing impairments and small children.

94. During the December 3 hearing, Dr. John Economidas, Chief of Cardiothoracic Surgery at UNC-Chapel Hill, spoke about the effects of

environmental noise on the aging population of the "severe adverse effect [of the ROMF] on the senior population in the vicinity" and of the findings in the WHO Guidelines.

95. During the December 3 hearing, citizens requested the City Council delay the rezoning to get an independent noise study with measurements closer to the Villas at Culp Arbor and with data regarding Creekside Elementary.

96. Citizens expressed concerns that GoTriangle had not provided adequate design information but was relying on design concepts in its statements about noise mitigation.

97. Citizens expressed concerns that the October 2018 noise study was not available until 8 weeks before the public hearing and that important data used was changed by GoTriangle on the eve of the hearing.

98. Citizens expressed concerns about the accuracy of the calculations in the October 2018 noise study.

99. On information and belief, the analysis in the October 2018 noise study does not provide the refined analysis needed to support a rezoning as it is a NEPA study and based on a level of design inadequate to allow analysis of actual mitigation efforts and is lacking in adequate data to create confidence in the reports.

100. Citizens expressed concern that the Consolidated Staff Report ("staff report") did not address noise at all and did not adequately consider factors required by the UDO.

101. The citizens' request for an independent noise study was not honored.

102. An engineer with training in signals, systems and acoustics testified to the City Council about the sharp curves in the preliminary site design and the attendant rail squeal resulting from sharp curves.

103. A PhD in biochemistry addressed the volume of flammable fluids on site and the large quantities of ammonia on site. She testified about the toxic effects of ammonia exposure.

104. Citizens expressed concerns about the impact of construction on the Site to existing wetlands and stream buffers.

105. Citizens pointed out that GoTriangle had talked in general terms about possible mitigation but had not committed to specific measures to mitigate noise impacts in conditions or on the plans.

106. Citizens provided information about the experiences of other light rail systems demonstrating the marginal effects on noise mitigation of rubber wheels, track lubrication and ground-shielding on wheel squeal.

107. Citizens reported that GoTriangle had stated in public meetings there was not public money available for mitigation efforts.

108. On information and belief, under GoTriangle's plans, 88 percent of existing trees on the 24-acre site would be removed, 100 percent of the wetlands were proposed to be filled in and 70 percent of the stream buffers would be destroyed.

109. A citizen introduced a December 6, 2017 email from the Mayor into the record stating that the location of the ROMF site had been decided upon and would not be revisited. This email predates the hearing by almost one year.

110. The competent, material and substantial evidence before the City Council showed that the change to the FLUM requested by GoTriangle

was inconsistent with the intent, goals, objectives, policies, guiding principles and programs of the City of Durham's adopted plans.

111. The competent, material and substantial evidence before the City Council showed that the proposed FLUM change was not compatible with existing land use patterns and/or designated future land uses in the area of the Site.

112. The competent, material and substantial evidence before the City Council showed that the proposed FLUM change would result in substantial adverse impacts in the adjacent area.

113. The competent, material and substantial evidence before the City Council showed that the Site is not of adequate shape and size to accommodate the proposed project and its shape and size results in a design that increases the substantial adverse impacts on the adjacent area.

114. Despite the competent, material and substantial evidence in the record that the FLUM change was unreasonable, the City Council adopted the proposed FLUM change.

115. Despite the competent, material and substantial evidence in the record which demonstrated that the rezoning is singling out and classifying a relatively small (just over 23 acre site) in single ownership surrounded by a much larger area uniformly zoned as residential, the City Council adopted a zoning map change to ILDP.

116. Petitioners, each individuals with standing, timely filed this Declaratory Judgment Action for a determination that the rezoning is null and void.

FIRST CAUSE OF ACTION

(Spot Zoning)

117. Paragraphs 1-116 are incorporated by reference.

118. The Site is small--just over 23 acres.

119. The Site has one owner, GoTriangle.

120. The rezoning singles out and classifies a relatively small tract in single ownership surrounded by a much larger area uniformly zoned.

121. The rezoning of the Site is spot zoning.

122. Defendant Durham has the burden of showing the reasonableness of its decision to spot zone the Property.

123. In rezoning requests involving spot zoning, Durham considers:

[T]he size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts.

Good Neighbors of Ore. Hill Protecting Prop. Rights v. Cty. Of Rockingham, 242 N.C. App. 280, 284-85, 774 S.E.2d 902, 906 (2015).

124. Based on the evidence before the Planning Commission, and subsequently the City Council, Durham cannot make a showing of reasonableness as to these factors. Specifically:

- a. The rezoning was not compatible with Durham's Comprehensive Plan because the zoning amendment is incompatible with the existing land uses in the area and the amendment made to FLUM is inconsistent with the criteria for amendment set out in the UDO.
- b. The benefits to GoTriangle, the rezoning applicant far outweigh those received by Plaintiffs, other neighbors, and the surrounding communities. Plaintiffs and their neighbors receive substantial detriment from the noise and bother generated by the rezoning. The rezoning will

irreparably damage Plaintiffs' quality of life and they will lose the enjoyment of their properties due to the rezoning.

- c. The uses allowed under the rezoning are incompatible with the uses present on adjacent tracts.

125. Even if a compelling public interest in a project exists, cataloging those benefits is inadequate to meet the burden of showing reasonableness in a spot zoning analysis.

126. Durham must demonstrate the zoning change was reasonable, given all affected.

127. Here, the rezoning wrenches a single small lot from its environment and gives it a zoning that disturbs the tenor of the neighborhood in a manner inconsistent with the surrounding uses.

128. Members of the City Council acknowledged that the rezoning request was detrimental to the surrounding area.

129. Members of the City Council based their votes on their perceived value of a light rail system not the impact of the rezoning of the Site.

130. A member of the City Council acknowledged that a private developer's rezoning request of this nature would not get the favorable treatment given GoTriangle.

131. City Council members acknowledged the residents of the Villas at Culp Arbor were carrying a heavy burden in order to bring a perceived benefit to the region.

132. There is no benefit from the rezoning to the surrounding neighbors. The ROMF is a maintenance facility and there is no light rail station or other amenity at the Site.

133. The rezoning constitutes, illegal spot zoning and is void and of no effect.

SECOND CAUSE OF ACTION

(Failure to Comply with Legal Requirements)

134. Paragraphs 1-133 are incorporated by reference.

135. N.C.G.S. §160A-383 provides that before adopting or rejecting a zoning amendment, the governing board must adopt a statement describing the consistency or inconsistency of the amendment with the Comprehensive Plan and explaining how the amendment is reasonable and in the public interest.

136. A statement approving a zoning amendment must include at least:

- a. a declaration that the approval is also deemed an amendment to the Comprehensive Plan;
- b. an explanation of the change in conditions the governing board considered in amending the zoning ordinance to meet the development needs of the community; and
- c. why the action was reasonable and in the public interest.

137. The statement adopted by the City Council contains summary language that tracks N.C.G.S. §160A-383 but does not contain a legally sufficient analysis as the statute requires.

138. Because Durham failed to comply with the statutory requirements for approving a zoning amendment, the rezoning should be deemed void and of no effect.

THIRD CAUSE OF ACTION

(Arbitrary and Capricious)

139. Paragraphs 1-138 are incorporated by reference.

140. The City Council failed to consider approval criteria in Durham's UDO and approval criteria required by the N.C. General Statutes.

141. The City Council failed to consider the consequences of the rezoning from RS-20 to ILDP on surrounding neighborhoods.

142. The City Council failed to consider lack of compliance of the proposed Development Plan with the UDO.

143. The City Council failed to seek detailed plans and conditions in the Development Plan but relied upon unconditioned representations to justify its decision.

144. The City Council had grounds for denying GoTriangle's rezoning request and no grounds for approving it. It was mandated to deny the rezoning request.

145. In rezoning the Site, the City Council acted in an arbitrary or capricious manner, contrary to law and without a reasonable basis.

146. In rezoning the Site, the due process rights of the Plaintiffs and other adjoining homeowners and their equal protection under the law were violated.

147. The rezoning places a severe and undue burden on Plaintiffs and surrounding, adjoining landowners.

148. The decision of the City Council to rezone the Site was arbitrary and capricious, and, therefore, void and of no effect.

FOURTH CAUSE OF ACTION

(Uses Proposed are Inconsistent with Industrial Light Rezoning)

149. Paragraphs 1-148 are incorporated by reference.

150. The light industrial zoning designation in the UDO does not fit the Development Plan submitted by GoTriangle.

151. The Plan proposed reflects Industrial, not Light Industrial uses.

152. The Plan as proposed violates the Major Corridor Overlay. UDO Section 4.9.3D.2 requires a major special use permit to disturb the Major Corridor Overlay.

153. The rezoning granted is based on a Development Plan that violates UDO 4.9.3D.2.

FIFTH CAUSE OF ACTION
(Due Process Violations)

154. Paragraphs 1-153 are incorporated by reference.

155. The UDO and Guidelines adopted by Durham require neighborhood meetings.

156. The UDO and the Guidelines contemplate honest and open disclosure of information by the developer.

157. GoTriangle violated the UDO provisions and Guidelines by holding neighborhood meetings that did not use detailed plans of the ROMF design.

158. GoTriangle's application does not contain detailed drawings.

159. The Development Plan submitted by GoTriangle does not contain the details required of it in the UDO.

160. The Development Plan represents that a two-way entry to the north will be developed but GoTriangle told neighbors in late November it is planning a one-way entry. The one-way entry will increase wheel squeal.

161. Many neighbors did not see plans until November 2018.

162. GoTriangle's noise analysis is not based on detailed design and cannot adequately reflect noise from actual design.

163. The letters sent by GoTriangle to "inform" residents did not meet the requirements of the Guidelines adopted by Durham.

164. Members of the Planning Commission and City Council acknowledged that GoTriangle had not been forthcoming with information to neighbors as is required by the Guidelines.

WHEREFORE, the Plaintiffs respectfully pray the Court for the following relief:

1. The Court find that the rezoning was conducted improperly and enter a declaratory judgment that the rezoning of the Site from RS-20 to ILDP is null and void;

2. The Court find that the City of Durham abused its discretion and acted outside the scope of its legal authority, and on that basis award reasonable attorney's fees under N.C. Gen. Stat. §6-21.7;

3. The Court tax the costs of this action to Defendants;

4. The Court grant Plaintiffs such other and further relief as this Court deems just and proper.

This the 31st day of January, 2019.

BROWN & BUNCH, PLLC

By: 

LeAnn Nease Brown
N.C. State Bar No. 12501

101 N. Columbia Street
Chapel Hill, NC 27514
Telephone: (919) 968-1111

Attorneys for Plaintiffs, John David
Gunter, Patricia Hadden Gunter, Joan
Beck Hart, Jon P. Hoffman, Betty Ray
Hoffman and Virginia A. Meihaus

NORTH CAROLINA

DURHAM

COUNTY

VERIFICATION

I, John David Gunter, being first duly sworn, deposes and says that he is a Plaintiff in this action, that he has read the foregoing Complaint for Declaratory Judgment, and knows the contents thereof; that the same is true of his own knowledge except as to those matters and things stated upon information and belief, and as to those he believes to be true.

This the 30 day of January, 2019.

John David Gunter (SEAL)
John David Gunter

Sworn to (or affirmed) and subscribed before
me this 30th day of January, 2019
by John David Gunter.

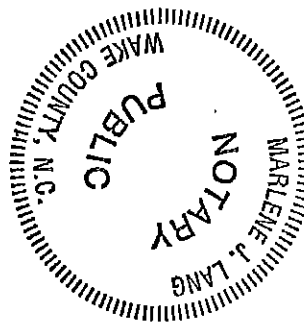
Marlene J. Lang
Signature of Notary Public

Marlene J. Lang
Printed or Typed Name of Notary Public

(Official Seal)

State of North Carolina
County of Orange

My Commission Expires: 01/25/2024



NORTH CAROLINA

DURHAM COUNTY

VERIFICATION

I, Patricia Hadden Gunter, being first duly sworn, deposes and says that she is a Plaintiff in this action, that she has read the foregoing Complaint for Declaratory Judgment, and knows the contents thereof; that the same is true of her own knowledge except as to those matters and things stated upon information and belief, and as to those she believes to be true.

This the 30 day of January, 2019.

Patricia Hadden Gunter
by John David Gunter POA
Patricia Hadden Gunter (SEAL)

Sworn to (or affirmed) and subscribed before
me this 30th day of January, 2019
by Patricia Hadden Gunter.

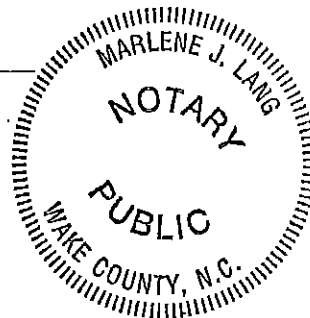
Marlene J. Lang
Signature of Notary Public

Marlene J. Lang
Printed or Typed Name of Notary Public

(Official Seal)

State of North Carolina
County of Orange

My Commission Expires: 01/25/2024



NORTH CAROLINA

DURHAM COUNTY

VERIFICATION

I, Joan Beck Hart, being first duly sworn, deposes and says that she is a Plaintiff in this action, that she has read the foregoing Complaint for Declaratory Judgment, and knows the contents thereof; that the same is true of her own knowledge except as to those matters and things stated upon information and belief, and as to those she believes to be true.

This the 30 day of JANUARY, 2019.

Joan Beck Hart (SEAL)
Joan Beck Hart

Sworn to (or affirmed) and subscribed before
me this 30th day of January, 2019
by Patricia Hadden Gunter.

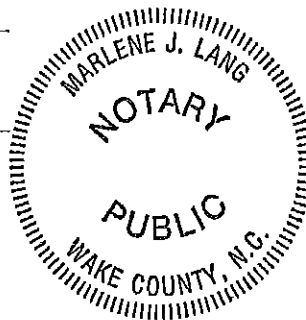
Marlene J. Lang
Signature of Notary Public

Marlene J. Lang
Printed or Typed Name of Notary Public

(Official Seal)

State of North Carolina
County of Orange

My Commission Expires: 01/25/2024



NORTH CAROLINA

Durham COUNTY

VERIFICATION

I, Jon P. Hoffman, being first duly sworn, deposes and says that he is a Plaintiff in this action, that he has read the foregoing Complaint for Declaratory Judgment, and knows the contents thereof; that the same is true of his own knowledge except as to those matters and things stated upon information and belief, and as to those he believes to be true.

This the 30th day of January, 2019.

Jon P. Hoffman (SEAL)

Sworn to (or affirmed) and subscribed before
me this 30th day of January, 2019
by Jon P. Hoffman.
Jon

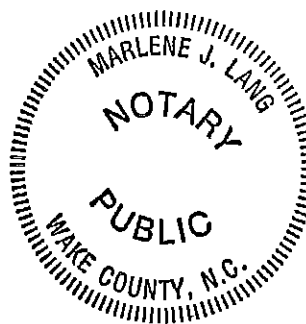
Marlene J. Lang
Signature of Notary Public

Marlene J. Lang
Printed or Typed Name of Notary Public

(Official Seal)

State of North Carolina
County of Orange

My Commission Expires: 01/25/2024



NORTH CAROLINA

Durham COUNTY

VERIFICATION

I, Betty Ray Hoffman, being first duly sworn, deposes and says that she is a Plaintiff in this action, that she has read the foregoing Complaint for Declaratory Judgment, and knows the contents thereof; that the same is true of her own knowledge except as to those matters and things stated upon information and belief, and as to those she believes to be true.

This the 30th day of January, 2019.

Betty Ray Hoffman (SEAL)
Betty Ray Hoffman

Sworn to (or affirmed) and subscribed before
me this 30th day of January, 2019
by Betty Ray Hoffman.

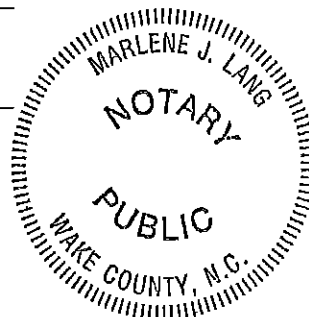
Marlene J. Lang
Signature of Notary Public

Marlene J. Lang
Printed or Typed Name of Notary Public

(Official Seal)

State of North Carolina
County of Orange

My Commission Expires: 01/25/2024




NORTH CAROLINA

DURHAM COUNTY

VERIFICATION

I, Virginia A. Meihaus, being first duly sworn, deposes and says that she is a Plaintiff in this action, that she has read the foregoing Complaint for Declaratory Judgment, and knows the contents thereof; that the same is true of her own knowledge except as to those matters and things stated upon information and belief, and as to those she believes to be true.

This the 30 day of January, 2019.



Virginia A. Meihaus

(SEAL)

Sworn to (or affirmed) and subscribed before
me this 30th day of January, 2019
by Virginia A. Meihaus.

Marlene J. Lang
Signature of Notary Public

Marlene J. Lang
Printed or Typed Name of Notary Public

(Official Seal)

State of North Carolina
County of Orange

My Commission Expires: 01/25/2024

